

REMARKS

Initially, in the Office Action the Examiner has rejected claims 1-10, 12-16, 18, 20-30, 32-35, 37, 38, 40, 43-50 and 52-63 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,143,153 (Black et al.). Claim 11 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of U.S. Patent Application Publication No. 20050027892 (McCabe et al.). Claim 19 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of U.S. Patent Application Publication No. 20040199815 (Dinker et al.).

Claims 31 and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of U.S. Patent No. 6,510,432 (Doyle). Claim 36 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of U.S. Patent No. 6,438,539 (Korolev et al.). Claims 42 and 64 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of U.S. Patent Application Publication No. 20030217068 (Fruchtman et al.).

Claims 1-16, 18-40, 42-51 and 53-65 remain pending in the present application.

Response to Arguments

In the Response to Arguments portion of the Office Action, the Examiner maintains the rejections and asserts that Black et al. still anticipates Applicant's claims. The Examiner then identifies portions of Applicant's claims and cites portions of Black et al. that the Examiner asserts discloses these limitations. However, the Examiner appears to conveniently fail to identify any portions of Black et al. that disclose or suggest at least one probe to collect data and metrics related to performance of an associated domain, as recited in the claims of the present application. As has been noted in Applicant's previous responses, Black et al. merely relates to comparing resource attributes with a threshold value. This is not collecting data and metrics. Black et al. discloses transferring information or results from the comparison. Black et al. does not disclose or

suggest a base station receiving collected data or metric from a probe. Black et al. relates to sending a result of the comparison.

Further, the Examiner appears to conveniently fail to identify any portions of Black et al. that disclose or suggest where the user selectable parameters comprise a type of data to be collected by the probe or a metric to be collected by the probe, as recited in the claims of the present application. As noted previously, Black et al. merely discloses the user selecting threshold values to be used to compare against.

Moreover, the col. 12 and col. 13 portions of Black et al. cited by the Examiner have nothing to do with a base station to receive the collected data or metric from associated ones of the plurality of probes, as recited in the claims of the present application. The portions in Black et al. cited by the Examiner merely relate to network devices replicating changes made to their internal databases and copying logging data into a database. Replicating and copying as disclosed in Black et al. is not receiving collected data or metric from associated ones of the plurality of probes, as recited in the claims of the present application.

35 U.S.C. §102 Rejections

Claims 1-10, 12-16, 18, 20-30, 32-35, 37, 38, 40, 43-50 and 52-63 have been rejected under 35 U.S.C. §102(e) as being anticipated by Black et al. Applicant re-asserts all arguments submitted in Applicant's previously filed response. Applicant respectfully traverses these rejections and provides the following additional remarks.

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 U.S.P.Q.2d (BNA) 1429, 1431 (Fed. Cir. 1997). The identical invention must be shown in as complete detail as is contained in the . . . claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); M.P.E.P. §2131. The elements must be arranged as required by the claim. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. §2131. It is respectfully submitted that the Examiner has not met the

required legal burden as set forth by the courts to substantiate valid rejections under 35 U.S.C. 102(e).

Regarding claims 1 and 44, Applicant submits that Black et al does not disclose or suggest the limitations in the combination of each of these claims of, *inter alia*, at least one probe to collect data and metrics related to performance of an associated domain, each at least one probe being embedded in the associated domain and including an associated control module containing user selectable parameters for controlling operation of each probe, the user selectable parameters comprising at least one of a type of data to be collect by the probe or a metric to be collect by the probe, or at least one base station to receive the collected data or metric from associated ones of the at least one probe.

The Examiner still maintains that Black et al. discloses at least one probe to collect data where each probe is embedded in associate domain and including an associated control module containing user selectable parameters for controlling operation if each probe. However, Applicant submits that the Examiner has not met the required legal burden for valid rejections under 35 U.S.C. 102(e). As noted previously, the Examiner fails to identify any portions of Black et al. that disclose or suggest at least one probe to collect data and metrics related to performance of an associated domain, as recited in the claims of the present application. Black et al. merely relates to comparing resource attributes with a threshold value. This is not collecting data and metrics. Black et al. discloses transferring information or results from the comparison. Black et al. does not disclose or suggest a base station receiving collected data or metric from a probe. Black et al. relates to sending a result of the comparison.

Further, Applicant submits that the Examiner again fails to meet the required legal burden for valid rejections under 35 U.S.C. 102(e). The Examiner fails to identify any portions of Black et al. that disclose or suggest where the user selectable parameters comprise a type of data to be collected by the probe or a metric to be collected by the probe, as recited in the claims of the present application. As noted previously, Black et al. merely discloses the user selecting threshold values to be used to compare against.

Moreover, Applicant submits that Black et al. disclosing network devices replicating changes made to their internal databases and copying logging data into a database cited by the Examiner fails to meet the required legal burden for valid rejections under 35 U.S.C. 102(e) of identifying in where in Black et al. is disclosed a base station to receive the collected data or metric from associated ones of the plurality of probes, as recited in the claims of the present application. As noted previously, replicating and copying as disclosed in Black et al. is not receiving collected data or metric from associated ones of the plurality of probes, as recited in the claims of the present application.

Regarding claims 2-10, 12-16, 18, 20-30, 32-35, 37, 38, 40, 43, 45-50 and 52-63, Applicant submits that these claims are dependent on one of independent claims 1 and 44 and, therefore, are patentable at least for the same reasons noted previously regarding these independent claims.

Accordingly, Applicant submits that Black et al. does not disclose or suggest the limitations in the combination of each of claims 1-10, 12-16, 18, 20-30, 32-35, 37, 38, 40, 43, 44-51 and 53-63 of the present application. Applicant respectfully requests that these rejections be withdrawn and that these claims be allowed.

35 U.S.C. §103 Rejections

Claim 11 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Black et al. in view of McCabe et al. Applicant respectfully traverses this rejection and submits that this claim is dependent on independent claim 1 and, therefore, is patentable at least for the same reasons noted previously regarding this independent claim. Applicant submits that McCabe et al. does not overcome the substantial defects noted previously regarding Black et al.

Accordingly, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of claim 11 of the present application. Applicant respectfully requests that this rejection be withdrawn and that this claim be allowed.

Claim 19 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of Dinker et al. Applicant respectfully traverses this rejection and submits that this claim is dependent on independent claim 1 and, therefore, is patentable at least for the same reasons noted previously regarding this independent claim. Applicant submits that Dinker, et al. does not overcome the substantial defects noted previously regarding Black et al.

Accordingly, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of claim 19 of the present application. Applicant respectfully requests that this rejection be withdrawn and that this claim be allowed.

Claims 31 and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of Doyle. Applicant respectfully traverses these rejections and submits that these claims are dependent on independent claim 1 and, therefore, are patentable at least for the same reasons noted previously regarding this independent claim. Applicant submits that Doyle does not overcome the substantial defects noted previously regarding Black et al.

Accordingly, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of each of claims 31 and 39 of the present application. Applicant respectfully requests that these rejections be withdrawn and that these claims be allowed.

Claim 36 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of Korolev et al. Applicant respectfully traverses this rejection and submits that this claim is dependent on independent claim 1 and, therefore, is patentable at least for the same reasons noted previously regarding this independent claim. Applicant submits that Korolev et al. does not overcome the substantial defects noted previously regarding Black et al.

Accordingly, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of claim 36 of the present application. Applicant

respectfully requests that this rejection be withdrawn and that this claim be allowed.

Claims 42 and 64 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Black et al. in view of Fruchtman et al. Applicant respectfully traverses these rejections and submits that these claims are dependent on one of independent claims 1 and 44 and, therefore, are patentable at least for the same reasons noted previously regarding this independent claim. Applicant submits that Fruchtman et al. does not overcome the substantial defects noted previously regarding Black, et al.

Accordingly, Applicant submits that none of the cited references, taken alone or in any proper combination, disclose, suggest or render obvious the limitations in the combination of each of claims 42 and 64 of the present application. Applicant respectfully requests that these rejections be withdrawn and that these claims be allowed.

Conclusion

In view of the foregoing remarks, Applicant submits that claims 1-16, 18-40, 42-51 and 53-65 are now in condition for allowance. Accordingly, early allowance of such claims is respectfully requested. If the Examiner has any questions about the present Amendment or anticipates finally rejecting any claim of the present application, a telephone interview is requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

Vivek Vasudeva
(Applicant)

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By: 
Frederick D. Bailey
Registration No. 42,282
Moore & Van Allen, PLLC
P.O. Box 13706
Research Triangle Park, N.C. 27709
Telephone: (919) 286-8000
Facsimile: (919) 286-8199